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APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
09/885,445		06/21/2001	Robert H. Frater	P 279185 P95US1	P 279185 P95US1 2733		
909	7590	09/10/2002					
		THROP, LLP	EXAMINER				
P.O. BOX 10		22	FERKO, KATHRYN P				
MCLEAN, V	VA 2210	12					
				ART UNIT	PAPER NUMBER		
				3743			
DATE				DATE MAILED: 09/10/2002	2		

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.   Applicantles  Office Action Summary	•				<u> </u>				
Examiner   Art Unit		Application	No.	Applicant(s)					
Rathryn Ferko   3743		09/885,445	;	FRATER ET AL.					
The MALLING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of the may be senialized under the provisions of 1 CFR 1.13(a). In so event, however, may a reply be timely filed after 50.0 (b) MONTHS from the mining date of the borrownization and the provisions of 1 CFR 1.13(a). In so event, however, may a reply be timely filed after 50.0 (b) MONTHS from the mining date of this communication. Failure to reply which ne set or extended prince for reply will, by datable, cause the application to become ABMONED (SU 3.5.1 (\$ 133)). For this action is FiliNAL.  2 (b) This action is FiliNAL.  2 (claim(s) 1.124 is/are pending in the application.  4 (claim(s) 1.124 is/are allowed.  6 (claim(s) 1.124 is/are objected to.  8 (claim(s) 1.126 is/are objected to.  8 (claim(s) 1.126 is/are objected to.  9 (claim(s) 1.126 is/are objected to.  10 (The drawing(s) filed on 1.126 is/are wither and application requirement.  Application Papers  9 (claim(s) 1.126 is/are objected to by the Examiner.  10 (claim(s) 1.126 is/are objected to by the Examiner.  11 (claim(s) 1.126 is/are objected to by the Examiner.  12 (claim(s) 1.126 is/are objected to by the Examiner.  13 (copies of the priority documents have been received.  14 (certified copies of the priority documents have been received in his National Stage application from the International Bureau (PCT Rule 1.72(a)).  *See the attached delated Office action for a list of the certified copies not received.  1	Office Action Summary	Examiner		Art Unit					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>f</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of toner may be analysised and state of the communication.  - Extensions of toner may be analysised and state of this communication.  - If the period for engly is parallelised for this communication.  - If the period for engly is parallelised for this communication.  - If the period for engly is parallelised to this communication.  - If No period for engly is parallelised the state of this communication.  - If No period for engly is parallelised the thin the remembra state they previous the state than the membra state the previous of the specific state of this communication, even if timely filed, may reduce any example state term adjustment. See 37 CFR 1.704(b).  - Status  1)				-					
THE MAILING DATE OF THIS COMMUNICATION.  Estatesions of time may be entitled under the provision of 3 CPR 1.15(6). In no event, however, may a reply be timely filed after SX (6) MONTHS from the mailing date of this communication.  If NO period to reply is spoilide under the provision of 3 CPR 1.15(6). In no event, however, may a reply be timely filed after SX (6) MONTHS from the mailing date of this communication.  If NO period to reply is spoilide date, the maintain autation period way have where pick (5) U.S. (5) MONTHS from the mailing date of this communication.  Failure to reply within the set or extended period for reply will, by statutory minimum of the provision of the communication.  Failure to reply within the set of catendary period was a statutory period will be statuted.  Failure to reply within the set of catendary period was a statuted period will be statuted.  Failure to reply within the set of catendary period for reply will, by statute, cause the application to become ARANDONED (63 U.S. C. § 1135). Any payly received by the divide date will be set of catendary and the set of catendary a		pears on the	cover sheet with the c	orrespondence addre	·SS				
2a)  This action is FINAL. 2b)  This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parle Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s) 1-124 is/are pending in the application.  4a) Of the above claim(s) 81-85 and 91-124 is/are withdrawn from consideration.  5)  Claim(s) is/are allowed.  6)  Claim(s) is/are allowed.  6)  Claim(s) is/are objected to.  7)  Claim(s) is/are objected to.  8)  Claim(s) 1-80 and 86-90 are subject to restriction and/or election requirement.  Application Papers  9)  The specification is objected to by the Examiner.  10)  The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11)  The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12)  The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)  All b)  Some * c) None of:  1.  Certified copies of the priority documents have been received in Application No.  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  *See the attached detailed Office action for a list of the certified copies not received.  14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a)  The translation of the foreign language provisional application has been received.  15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.	THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a repl - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statute - Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	136(a). In no even ly within the statut will apply and will e. cause the applic	it, however, may a reply be time ory minimum of thirty (30) day: expire SIX (6) MONTHS from ation to become ABANDONE	nely filed s will be considered timely. the mailing date of this comm D (35 U.S.C. § 133).	unication.				
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Application/Control Number: 09/885,445 Page 2

Art Unit: 3743

## **DETAILED ACTION**

## Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - Claims 1-22 and 51-60, drawn to a breathable mask arrangement with an area requirement, classified in class 128, subclass 206.27.
  - II. Claims 23-33, drawn to a breathable mask arrangement with a total mask force requirement, classified in class 128, subclass 207.11.
  - III. Claims 34-46 and 66-74, drawn to a breathable mask arrangement with a contact force requirement, classified in class 128, subclass 204.18.
  - IV. Claims 47-50, drawn to breathable mask arrangement having an area requirement and a displacement requirement, classified in class 128, subclass 206.24.
- 2. Inventions I, II, III, and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, inventions each have separate utility such separate/distinct masks designed to function under each of the conditions as claimed. As recited on page 6 of the current application, masks may be prepared according to a predetermined force that may be a function of mask pressure, displacement, or both mask pressure and displacement. See MPEP § 806.05(d).
- 3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Art Unit: 3743

- 4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
- 5. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: figures 4-11

Species B: figure 12

Species C: figure 13

Species D: figure 14

Species E: figure 15

Species F: figure 16

Species G: figure 17

Species H: figure 18

Species I: figures 21-24

Species J: figures 25

Species K: figure 26

Species L: figure 27

Species M: figure 28

Species N: figure 29

Species O: figure 30.

Art Unit: 3743

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, with respect to species A-O all the independent claims except 61, 75, and 86 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Art Unit: 3743

In addition to dependent claims drawn to distinct species, it appears that independent claims 61, 75, and 86 are also drawn to distinct species. So once a subcombination group is elected, one single species must be elected, wherein claims are only drawn to the elected subcombination and single species.

- 6. A telephone call was made to Glenn Perry on Thursday, August 29, 2002 to request an oral election to the above restriction requirement, but did not result in an election being made.
- 7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Ferko whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

Art Unit: 3743

Page 6

872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

KF August 30, 2002

Supervisory | Examiner

Zrcup 3 00